

Message Text

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ORIGIN L-03

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AF/EX:EMAGUIRE (DRAFTE)

JUSTICE:BRISTAU (INFO)

L/AF:BKHUFFMAN (INFO)

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R 041802Z JAN 74

FM SECSTATE WASHDC

TO AMEMBASSY NIAMEY

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C O R R E C T E D C O P Y (PARA 1 LINE 18 ONITTED)

E.O. 11652, N/A

TAGS: APER, AFSP, NG

SUBJECT: EMBASSY PARTICIPATION IN GON SOCIAL SECURITY
SYSTEM

REF: OM OF DECEMBER 13, 1973

1. DEPARTMENT NOTES PARAGRAPH STATING THAT QUOTE NO
PROCEEDINGS CAN BE UNDERTAKEN IN NIGER AGAINST THE
EMBASSY OF THE USA AS LONG AS THE EMBASSY HAS DIPLOMATIC
IMMUNITY WHICH AUTOMATICALLY INCLUDES IMMUNITY FROM COURT
PROCEEDINGS AGAINST YOUR GOVERNMENT. UNQUOTE. DEPARTMENT
INTERPRETS THIS TO MEAN THAT A DISSATISFIED EMPLOYEE
COULD NOT INSTITUTE PROCEEDINGS AGAINST THE EMBASSY PER SE
OR US DIPLOMATS PERSONALLY BUT COULD, REPEAT COULD,
INSTITUTE PROCEEDINGS AGAINST THE USG BY ATTACHING A USG
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COMMERCIAL ACCOUNT HELD IN LOCAL BANK OR PERHAPS SIMPLY

BY MAILING NOTICE OF THE FILING OF CAUSE OF ACTION IN LOCAL NIGERIEN COURT. IF CAUSE OF ACTION WERE COMMENCED BY SUCH ATTACHMENT OR MAILED NOTICE, WHICH HAS OCCURRED IN SEVERAL OTHER COUNTRIES, THE DEPARTMENT WOULD HAVE TO DEFEND AND UNDER US DOCTRINE OF RESTRICTIVE THEORY OF SOVEREIGN IMMUNITY WOULD NOT, REPEAT NOT, RAISE THE DEFENSE OF SOVEREIGN IMMUNITY. HENCE, USG WOULD BE COMPELLED TO DEFEND ON THE MERITS, AND OPINION APPEARS TO SUGGEST THAT USG WOULD BE LIABLE QUOTE AT LEAST PAY THE TOTAL AMOUNT OF THE CONTRIBUTIONS UNQUOTE FOR THE EMPLOYEES STARTING FROM THE DATE OF THEIR ENTRY ON DUTY.

2. DEPARTMENT INQUIRES IF USG HAS ALREADY PAID LOCAL EMPLOYEES A SALARY BENEFIT IN LIEU OF PAYMENT TO NIGERIEN NATIONAL SOCIAL SECURITY FUND AND HENCE WOULD HAVE A VALID DEFENSE ON THE MERITS WITHOUT A DEFENSE OF SOVEREIGN OR DIPLOMATIC IMMUNITY? IS THERE ANY OTHER BONA FIDE DEFENSE ON THE MERITS WITHOUT SOVEREIGN OR DIPLOMATIC IMMUNITY WHICH COULD BE AVAILABLE?

3. DEPARTMENT INQUIRES IF THE NOTED OTHER WESTERN EUROPEAN EMBASSY WHICH MADE RETROACTIVE PAYMENTS ALSO PAID PENALTY FOR LATE PAYMENT.

4. DEPARTMENT INQUIRES IF USG WOULD BE ABLE TO AVOID MAKING PAYMENT OF PENALTY FOR LATE PAYMENT IN VIEW OF THE EMBASSY'S SPECIAL STATUS WHICH REQUIRES AN AGREEMENT SUCH AS THAT NOW CONTEMPLATED BEFORE EMBASSY PERSONNEL ARE INCLUDED WITHIN THE NIGERIEN SOCIAL SECURITY FUND.

5. DEPARTMENT INQUIRES HOW MUCH THE RETROACTIVE PAYMENT WOULD BE IF USG AGREED TO MAKE SUCH PAYMENT AND ALSO HOW MUCH THE PENALTY PAYMENT, IF ANY, WOULD BE.

6. DEPARTMENT INQUIRES IF A PAYMENT CAN BE MADE TO THE NIGERIEN SOCIAL SECURITY FUND IN A DIRECT FASHION SO THAT THERE IS NO POSSIBILITY THAT EMPLOYEES WHO MAY BE NECESSARY MIDDLE MEN WILL HAVE THE OPPORTUNITY TO DIVERT FUNDS TO THEIR OWN USE AND SO THAT THERE WILL BE A MINIMAL OPPORTUNITY FOR FUTURE LAWSUITS.
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7. DEPARTMENT REQUESTS EMBASSY'S OPINION AS TO WHETHER OR NOT USG WOULD RECEIVE SUBSTANTIAL JUSTICE IN THE COURTS OF NIGER IF USG WERE TO LITIGATE A SOCIAL SECURITY CASE THERE. KISSINGER

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